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MILLENNIUM ELECTRONICS, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

EVERFLOW TECHNOLOGY  
CORPORATION, incorporated under the  
laws of the Republic of China (Taiwan),

Plaintiff,

v.

MILLENNIUM ELECTRONICS, INC., a  
California corporation,

Defendant.

Case No. C07-05795 JF

**ANSWER OF DEFENDANT MILLENNIUM  
ELECTRONICS, INC. TO COMPLAINT**

Defendant Millennium Electronics, Inc. ("Defendant") answers the complaint ("Complaint") of Plaintiff Everflow Technology Corporation ("Plaintiff") by admitting, denying, and alleging as follows:

1. Answering paragraph 1 of the Complaint, Defendant lacks information and belief to admit or deny the allegations in that paragraph and, on that basis, denies each and every allegation contained therein, with the exception of the allegation relating to its principal place of business. Defendant admits that its principal place of business is in San Jose, CA.

1           2.     Answering paragraph 2 of the Complaint, Defendant admits the allegations  
2 contained therein.

3           3.     Answering paragraph 3 of the Complaint, Defendant admits Plaintiff is in the  
4 computer cooling business. However, Defendant at this time does not have specific information  
5 about every detail listed in this paragraph relating to Plaintiff's business and therefore otherwise  
6 denies the allegations in this paragraph.

7           4.     Answering paragraph 4 of the Complaint, Defendant admits the allegations  
8 contained therein. However, Defendant denies the inference, found in paragraph 6 of the  
9 Complaint, that this paragraph 4 contains the complete terms of an agreement.

10          5.     Answering paragraph 5 of the Complaint, Defendant admits that, generally  
11 speaking, the listed items were shipped. However, Defendant denies that Defendant made a  
12 special request and that it made an unconditional promise to pay.

13          6.     Answering paragraph 6 of the Complaint, Defendant denies the inference that this  
14 paragraph 4 contains the complete terms of an agreement. Defendant further denies that Plaintiff  
15 performed its obligations because, among other things, Plaintiff sought to take Defendant out of  
16 the chain of distribution. Plaintiff's acts in this respect had a serious adverse effect on  
17 Defendant's business. Furthermore, Defendant denies Plaintiff's allegations of performance  
18 because Plaintiff shipped items late.

19          7.     Answering paragraph 7 of the Complaint, Defendant admits that, generally  
20 speaking, the products were invoiced. However, Defendant does not at this time have precise  
21 invoice information as to each and every shipment.

22          8.     Answering paragraph 8 of the Complaint, Defendant denies each and every  
23 allegation contained therein. Defendant denies that paragraph 4 of the Complain contains a  
24 description of promises. Defendant further denies that it has wrongfully denied payment for  
25 goods, and further denies that the dollar amount listed is owed.  
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1           9.     Answering paragraph 9 of the Complaint, Defendant admits and denies this  
2 paragraph for reasons detailed in the paragraphs above.

3           10.    Answering paragraph 10 of the Complaint, Defendant admits that generally the  
4 items listed were sent. However, Defendant denies that the amount listed is owed, Defendant  
5 denies that the goods were delivered at Defendants special instance, and Defendant denies that it  
6 agreed to pay the sum listed.

7           11.    Answering paragraph 11 of the Complaint, Defendant denies the allegations  
8 contained therein. Defendant has attempted to negotiate with Plaintiff its allegations of non-  
9 payment.

10          12.    Answering paragraph 12 of the Complaint, Defendant lacks information and  
11 belief to admit or deny the allegations in that paragraph and, on that basis, denies each and every  
12 allegation contained therein.

13          13.    Answering paragraph 13 of the Complaint, Defendant admits and denies this  
14 paragraph for reasons detailed in the paragraphs above.

15          14.    Answering paragraph 14 of the Complaint, Defendant denies that it owes the  
16 amount alleged. Defendant admits receiving on October 17, 2007, a communication in which  
17 Plaintiff alleged non-payment of a variety of items.

18          15.    Answering paragraph 15 of the Complaint, Defendant denies the allegations  
19 contained therein. Defendant has attempted to negotiate with Plaintiff its allegations of non-  
20 payment.

21          16.    Answering paragraph 16 of the Complaint, Defendant denies that it owes the  
22 amount alleged.

23          17.    Answering paragraph 17 of the Complaint, Defendant admits and denies this  
24 paragraph for reasons detailed in the paragraphs above.

25          18.    Answering paragraph 18 of the Complaint, Defendant denies each and every  
26 allegation in this paragraph. Defendant denies that it made a special request, and denies that it  
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1 owes the amount listed.

2 19. Answering paragraph 19 of the Complaint, Defendant denies that it owes the  
3 amount alleged. Defendant admits receiving on October 17, 2007, a communication in which  
4 Plaintiff alleged non-payment of a variety of items.

5 20. Answering paragraph 20 of the Complaint, Defendant denies that it owes the  
6 amount alleged.

7 **AFFIRMATIVE DEFENSES**

8 1. AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT  
9 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED  
10 THEREIN, the answering Defendant asserts that Plaintiff has waived any and all claims that it  
11 may have or have had against the answering Defendant.  
12

13 2. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
14 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
15 CONTAINED THEREIN, the answering Defendant alleges that said Complaint fails to state  
16 facts sufficient to constitute a cause of action against the answering Defendant.  
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18 3. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
19 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
20 CONTAINED THEREIN, the answering Defendant alleges that said Complaint is barred by the  
21 doctrine of unclean hands.  
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23 4. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
24 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
25 CONTAINED THEREIN, the answering Defendant alleges that, at all times and places  
26 mentioned in the Complaint herein, Plaintiff failed to mitigate the amount of its purported  
27 damages. The damages claimed by Plaintiff could have been mitigated by due diligence on its  
28

1 part or by one acting under similar circumstances. The Plaintiff's failure to mitigate is a bar to  
2 its recovery under its Complaint.

3 5. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
4 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
5 CONTAINED THEREIN, the answering Defendant alleges that said Complaint fails to state  
6 facts sufficient to constitute a breach of contract cause of action against the answering Defendant  
7 because the allegations relating to the existence of a contract do not meet the requirements of the  
8 statute of frauds.  
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10 6. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
11 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
12 CONTAINED THEREIN, the answering Defendant alleges on information and belief that the  
13 sole and legal cause of the incident complained of by Plaintiff in its Complaint was due to the act  
14 and/or omissions of persons and entities other than the answering Defendant.  
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16 7. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
17 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
18 CONTAINED THEREIN, the answering Defendant alleges that any damage or injury suffered  
19 by Plaintiff was caused by risks of which Plaintiff was well aware and which Plaintiff voluntarily  
20 assumed.  
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22 8. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
23 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
24 CONTAINED THEREIN, the answering Defendant alleges that the Complaint, and each and  
25 every cause of action contained therein, is barred because of acts, omissions, representations, and  
26 courses of conduct of Plaintiff by which the answering Defendant was led to rely to its detriment,  
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1 thereby barring under the doctrine of equitable estoppel any causes of action asserted by  
2 Plaintiff.

3 9. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
4 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
5 CONTAINED THEREIN, the answering Defendant alleges that Plaintiff's conduct bars it from  
6 any recovery herein by virtue of the equitable doctrine of waiver.  
7

8 10. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
9 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
10 CONTAINED THEREIN, the answering Defendant alleges that the Complaint is barred, in  
11 whole or in part, because the events and transactions alleged therein are justified in that their  
12 benefits outweigh their harm, if any there were.  
13

14 11. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
15 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
16 CONTAINED THEREIN, the answering Defendant alleges that its conduct was not the cause in  
17 fact or the legal cause of any of the losses alleged by Plaintiff.  
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19 12. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
20 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
21 CONTAINED THEREIN, the answering Defendant alleges that they exercised sound business  
22 judgment in taking all actions pertaining to the corporation and in performing all acts alleged in  
23 the Complaint.  
24

25 13. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
26 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
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1 CONTAINED THEREIN, the answering Defendant alleges that Plaintiff consented to the  
2 alleged actions complained of in its Complaint.

3 14. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
4 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
5 CONTAINED THEREIN, the answering Defendant alleges that at all times relevant herein,  
6 Plaintiff, with full knowledge of all of the facts in any way connected with or relating to the  
7 matters alleged against the answering Defendant, duly ratified, acquiesced in and confirmed in  
8 all respects the conduct and actions of the answering Defendant.  
9

10 15. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
11 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
12 CONTAINED THEREIN, the answering Defendant alleges that Defendant presently has  
13 insufficient knowledge or information from which to form a belief as to whether it may have  
14 additional, as yet unstated, affirmative defenses available. Answering Defendant reserves the  
15 right herein to assert any additional defenses in the event that discovery indicates they would be  
16 appropriate.  
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19 16. AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
20 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
21 CONTAINED THEREIN, the answering Defendant alleges that Defendant is entitled to an offset  
22 for damages caused by Plaintiff's wrongful conduct.  
23

24 **PRAYER**

25 1. That Plaintiff take nothing by reason of its Complaint, that judgment be rendered  
26 in favor of Defendant;

27 2. That Defendant be awarded its costs of suit incurred in defense of this action;  
28

3. For recovery of attorneys fees and costs; and

4. For such other relief as the Court deems appropriate.

The electronic filer attests that the individual whose name appears below has signed this document. See N.D. Cal. General Order 45, Section X.

Dated: December 11, 2007

STRUCTURE LAW GROUP, LLP

By: \_\_\_\_\_ / s /

Mark R. Figueiredo  
Attorneys for Defendant  
MILLENNIUM ELECTRONICS, INC.

### DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues.

The electronic filer attests that the individual whose name appears below has signed this document. See N.D. Cal. General Order 45, Section X.

Dated: December 11, 2007

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By: \_\_\_\_\_ / s /

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